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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

ALEX McDONALD

Plaintiff,

v.

UNION PACIFIC RAILROAD COMPANY, a
foreign business corporation,

Defendant.

CASE NO.

COMPLAINT

(Property Damage; Negligence)

DEMAND FOR JURY TRIAL

Plaintiff Alex McDonald brings this Complaint against Union Pacific Railroad Company and alleges as follows:

NATURE OF ACTION

1. This action arises out of damage to the plaintiff's property from the waterway under the trestle within the Union Pacific Railroad Company's ("Union Pacific") right of way in Fairview, Oregon.

2. Over the course of a number of years, Union Pacific allowed a very large beaver dam to be constructed underneath their trestle and within their right of way. Over time this obstruction in Fairway Creek, in the right of way of Union Pacific, caused damages to plaintiff's property.

THE PARTIES

3. Alex McDonald is a resident of Jefferson County, Oregon.

4. Union Pacific is a corporation organized under the laws of Delaware, with its principal place of business located in Nebraska.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332 because this action is between citizen of different states and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs.

6. Venue is proper in the District of Oregon pursuant to 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to the claims occurred in this District. Additionally, the parties to this action have stipulated that venue is proper in this District.

FACTUAL ALLEGATIONS

7. Plaintiff is the owner of certain real property in Multnomah county adjacent to Fairview Creek and more particularly described in Exhibit A as tract "b" attached hereto and incorporated by reference herein.

8. Union Pacific owns a right of way across Fairview Creek adjacent to plaintiff's property.

9. For the past several years, Union Pacific knowingly allowed a beaver dam to be built within Union Pacific's right of way on Fairview Creek. The beaver dam was approximately 50 feet in width and 8 feet in height. It was, and still is, easily visible during all daylight hours from the railroad trestle across the creek, which Union Pacific employees inspect on a regular and timely basis.

FIRST CLAIM OF RELIEF

(Common Law Negligence)

10. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 9 above, as though fully set forth herein.

11. The dam created a foreseeable risk of harm in that the beaver dam would potentially cause damage to the railroad trestle and/or would cause damage to adjoining properties through flooding, river channels and burrowing by the beavers in and around the dam.

12. Defendant Union Pacific had a duty to maintain its property, including its right of way across Fairview Creek. This duty included the need to remove the beaver dam within its right of way before the dam caused damage to adjoining properties.

13. For several years, Union Pacific did not take any action to remove the beaver dam even though the dam, and the beaver activity, was creating a potential threat to the integrity to the trestle and the surrounding property. It was reasonably foreseeable that the creation of a large dam within the Union Pacific right of way would adversely impact properties adjacent to the right of way of Union Pacific. Over time, the dam did create flood waters, river channels and numerous beaver burrows which have caused severe damage to plaintiff's property.

14. Defendant's negligence in not removing the beaver dam over a period of several years was the cause of the damage to plaintiff's property. The damage led to a devaluation of plaintiff's property as it is now unusable for development. The damages to plaintiff and plaintiff's property by such devaluation, is \$2,500,000.

15. Despite demands, defendant has refused and failed to pay any damages to the plaintiff.

SECOND CLAIM OF RELIEF

(Brach of Regulatory Duty to Keep Fairway Creek Free of Obstruction)

16. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 15 above, as though fully set forth herein.

17. Pursuant to the U.S. Code of Federal Regulations, Union Pacific had a duty to keep Fairview Creek, within its right of way, free of all obstruction. (49 CFR 213.33) ("regulations")

18. Plaintiff as the owner of real property adjacent to the defendant's right of way is a person meant to be protected by the regulation.

19. The damages suffered by plaintiff are the type of damage the regulation was intended to prevent.

20. Damages in the amount of \$2,500,000.00 due to failing to comply with Federal Regulations.

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WHEREFORE, plaintiff prays that:

A. Union Pacific be required to pay plaintiff all damages suffered by plaintiff as a result of Union Pacific's negligence and regulatory duty to keep waterways within a railroad right of way clear of obstructions as set forth above, in an amount of \$2,500,000.

B. Union Pacific be required to pay costs of suit, attorney fees incurred in this suit; and

C. Plaintiff be granted such other and further relief as this Court deems just and equitable.

Dated this _____ day of July, 2017.

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